MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

DOCKET NO. CUM-16-421

IN RE CAROL BOARDMAN
Appellant

On Appeal from the Cumberland County Probate Court

BRIEF OF APPELLANT CAROL ANN BOARDMAN

November 14, 2016

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

Carol Ann Boardman is 61 year-old woman who lives in Standish, Maine. On June 17, 2016, Ms. Boardman petitioned the Cumberland County Probate Court to change her last name from Boardman to Currier. (A. 3). Ms. Boardman stated her reason for the petition as follows: "I was widowed 3 years ago and would like to change my name now." (A. 3) At the hearing held August 18, 2016, Ms. Boardman elaborated that she wanted to change her married name because her husband passed away in 2013 and she wanted a "fresh start." (A. 6).

In support of her petition, Ms. Boardman provided an affidavit swearing that she had given a copy of the petition to "[a]ny adult person who is a relative or with whom I live or work or who is a blood relative of a person with whom I live who has the same name which I am seeking to adopt." (A. 4). She also swore that she had no minor children and that she was not involved in any bankruptcy proceedings or creditor arrangements and did not reasonably anticipate that any such proceedings or arrangements were about to begin. (A. 4). Ms. Boardman further stated in her affidavit that she knew of no person who had reason to object to the change of name. (A. 4).

After accepting Ms. Boardman's petition and affidavit, the probate court took a copy of Ms. Boardman's photo ID and provided due notice of the proposed name change by publication on July 6, 2016. (A. 1).

At the hearing, the court asked Ms. Boardman whether Currier was her maiden name, and Ms. Boardman clarified that Currier was not her maiden name but instead the name of "[m]y friend, Chuck Currier." (A. 6). The court confirmed that Ms. Boardman and Mr. Currier were not married and, without taking any additional evidence, denied the name change. (A. 7).

The basis for denial appeared to be a policy of denying name changes to unmarried partners. "If the two of you share the same last name," the court stated, "you would appear to be married by anybody who met you. That would be deceptive." (A. 6). The court stated that it would be misleading if Ms. Boardman and Mr. Currier applied for credit together, signed a lease, or received access to records as an unmarried couple with the same last name. (A. 6-7).

In its oral ruling, the court acknowledged that any false impression of being married would be given "inadvertently." (A. 7). Nevertheless,

the court held Ms. Boardman's request to share the surname of a friend presented "one of the few exceptions there are to name changes." (A. 7).

The court followed its oral ruling with an order stating that Ms. Boardman sought to change her name to that of her partner and admitted that such a name change would give a false impression to the public that they were married. (A. 2).

Ms. Boardman timely filed a notice of appeal and transcript request. (A. 9-13).

ISSUES PRESENTED FOR REVIEW

1. Did the Cumberland County Probate Court abuse its discretion by basing its decision on unsupported factual findings about Ms. Boardman's personal circumstances and the likelihood of deception of the public?

2. Did the Cumberland County Probate Court abuse its discretion in failing to apply the appropriate legal standards in the name change statute 18-A M.R.S. § 1-701, as interpreted by the Law Court?

SUMMARY OF THE ARGUMENT

This Court reviews a denial of a name change petition for abuse of discretion. *In re A.M.B.*, 2010 ME 54, 997 A.2d 754, 755 (Me. 2010).

The probate court should generally grant a petition for a name change if the petition is not submitted with fraudulent intent and the change of name does not interfere with the rights of others. 18-A M.R.S. § 1-701; *In re A.M.B.*, 997 A.2d at 755.

The probate court here denied the name change based on a finding that Ms. Boardman and her friend Chuck Currier could not share the same surname because it would give the false impression to the public that they were married. (A. 2). The court characterized its decision as applying "one of the few exceptions there are to name changes." (A. 7).

The probate court abused its discretion in denying Ms. Boardman's petition because (1) its decision was based on unsupported factual findings, speculation, and generalizations about Ms. Boardman's personal circumstances and the interests of the public at large; and (2) it did not apply the legal standards inherent in the name change statute.

On a narrow level, the there was no evidence on the record to support a finding that Ms. Boardman and Mr. Currier were partners and were cohabitating, or that they were likely to jointly seek credit, a lease, access to records or other benefits. Thus, even if the court had a valid policy of denying name changes to unmarried partners, there was no support for application of that exception here.

On a broader level, the so-called exception that the court articulated by the court is itself a factual finding that is unsupported by facts on the record. The probate court speculated that creditors, landlords, and records custodians would be deceived by unmarried persons sharing a surname and otherwise unable to verify marital status. More generally, the court found that the public at large would be confused as to Ms. Boardman's legal status.

None of the findings underlying the court's application of the "exception" were based on facts in evidence, and no person or entity raised any objection in the proceedings alleging that their rights would be impaired in any way by the proposed name change.

Finally, in focusing solely on whether the proposed name would confuse the public as to petitioner's marital status, the court failed to address the legal standards under the applicable statute and case law.

The name-change statute focuses on whether the petitioner has a purpose in seeking a name change that is fraudulent or contrary to the public interest. 18-A M.R.S. § 1-701(f). The court made no real inquiry into Ms. Boardman's purpose, which her petition and affidavit on their face show to be free of improper motives.

Maine caselaw allows the court to consider whether granting the name change would substantially interfere with the rights of others or is of a scandalous or frivolous nature. The probate court, however, did not identify any rights of the public that would have been harmed by granting Ms. Boardman's petition.

Inherent in the legal standard for name changes is a requirement that the court should have some decisional authority or factual evidence indicating that the proposed name change would substantially interfere with the rights of others. Generalizations and speculation should not be sufficient to deny a petition that is otherwise in order.

The court here made no specific factual findings supporting application of its exception to Ms. Boardman's circumstances. More importantly, any application of such a blanket exception is an arbitrary exercise of discretion that does not rely on the legal standards in the name change statute. Consequently, Ms. Boardman requests that this court remand with instructions that a blanket prohibition on shared surnames is improper.

ARGUMENT

I. Name changes are broadly permitted in the absence of fraudulent intent or substantial interference with others' rights.

Under 18-A M.R.S. § 1-701 (a), a person who wishes to change their legal name may petition the judge of probate in the county in which they reside. The judge may change the petitioner's name after due notice. 18-A M.R.S. § 1-701 (b).

The probate judge may deny the name change if there is reason to believe "that the person is seeking the name change for the purpose of defrauding another person or entity or for purposes otherwise contrary to the public interest." 18-A M.R.S. § 1-701(f). To determine whether the petitioner is motivated by such an improper purpose, the court may require petitioner to undergo criminal history, motor vehicle, and credit checks. 18-A M.R.S. § 1-701(e).

The current name change statute is essentially a codification of the Court's decision in *In re Susan E. Reben a/k/a Susan E. Hirsch*, in which the Court construed the previous name-change statute. 342 A.2d 688 (Me. 1975); *In re A.M.B.*, 2010 ME 54, 997 A.2d 754, 755 (Me. 2010).

In *Reben*, the probate court denied the appellant's request to change her married surname back to her maiden name. 342 A.2d at 695. This was an unusual request for the time because Reben was still married (and was represented by her husband in the proceedings). *Id.* at 689, 695. There was not an extensive discussion of the lower court's reasoning for denying Reben's petition, however, other than to note that the court had found no evidence of fraudulent purpose. *Id.* at 689.

Because the former name change statute did not expressly provide criteria for reviewing name changes, the Court focused on deciding which legal standards were implied in the statute. *Id.* at 689.

After extensively reviewing the common law of name changes, the Court determined that judicial name changes should be permitted when there is no fraudulent intent, the change would not substantially interfere with the rights of others, and the name is not of a scandalous or frivolous nature. *Id.* at 695.

In the absence of any specific objections or evidence of fraudulent intent, and because the probate court would not be required to decree a name of a scandalous or frivolous nature, the probate court's denial of Reben's petition was an abuse of discretion. *Id.*

II. Courts should only deny a name change for substantial reasons supported by record evidence as opposed to speculation.

The permissive standard in *Reben* and its codification at 18-A M.R.S. § 1-701 are consistent with decisions by other appellate courts addressing the discretion of lower courts in name changes.

In a recent Pennsylvania case, for example, the petitioner had unsuccessfully sought to change her last name to that of her lifelong companion. *In re Nadine Ann Miller*, 824 A.2d 1207 (Pa. Sup. 2003). The trial court denied the petition based on a "policy to deny these name changes because … it permits the party to have what would appear to the public to be a marriage when in reality it is not." *Id.* at 1209.

The appellate court in *Miller* found no evidence on the record to support the trial court's conclusion that the name change "would have held [petitioner and her partner] out to society as folks who were legally married." *Id.* at 1214. In holding that the trial court abused its discretion, the appellate court observed that courts generally have "no monopoly on wisdom, no heightened discernment into the public mind and no right to impose personal views or values on the citizenry." *Id.*

Accordingly, "[w]here a court denies an application for adoption of a name change without anything on the record to support such denial, we rob the applicant of that which in no way enriches, or protects, the public and makes the applicant poor indeed." *Id.*

Other appellate courts have been equally skeptical of findings that a name change would cause some uncertain confusion or deception of the public at large.[1] One of those cases is *In re Robert Henry McIntyre*, 715

[1] *See, e.g., In re Robert Floyd Brown, Jr.*, 770 S.E.2d 494, 498 (Va. 2015) (name change requested by transgender inmate was wrongly denied because there was no evidence the change would have a "negative impact on the community" and no evidence of a fraudulent purpose); *In re Bicknell*, 771 N.E.2d 846 (Ohio 2002) (reversing lower court's decision that name change would be contrary to public policy promoting civil marriage); *In re Jill Iris Bacharach*, 780 A.2d 579, N.J. Sup. A.D. 2001) (denial of petition "on the hypothesis that some members of the public may be misled about the legal status of same-sex marriages in New Jersey is farfetched and inherently discriminatory"); *In re Snaphappy Fishsuit Mokiligon*, 106 P.3d 584 (N.M. App. 2004) (allowing petitioner

A.2d 400 (Pa. 1998), in which a 53 year-old male transitioning to female petitioned to change his name to Katherine Marie McIntyre.

In *McIntrye*, the lower court had held that granting a name change to a preoperative transsexual male would "be deceptive to the public and Appellant's coworkers." *Id.* at 402. The Pennsylvania Supreme Court acknowledged the broad discretion of the lower court, but noted that the primary purpose of the name change statute for adults was to "prohibit fraud by those attempting to avoid financial obligations." *Id.* (citation omitted).

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to change his name to "variable" because there was no showing of "unworthy motive, fraud, or choice of a name that is bizarre, unduly lengthy, ridiculous, or offensive to common decency"); *Isom v. Circuit Court*, 437 So. 2d 732, 734 (Fla. App. 2d Dist. 1983) (holding that the lower court abused its discretion in finding that inmate's name change would create problems for department of corrections and law enforcement agencies); *In re Walter Knight*, 537 P.2d 1085, 1086 (Colo. App. 1975) (reversing lower court because finding that change would be prejudicial to prison authorities and police was not supported by the record).

The court concluded that there was "no public interest being protected by the denial" of the application, and that "the details surrounding Appellant's quest for sex-reassignment surgery are not a matter of governmental concern." *Id.* at 403. Because the record showed no intent to defraud , the trial court had abused its discretion in denying the petition. *Id.*

The case of *In re Ralph Randall Cruchelow*, 926 P.2d 833 (Utah 1996) further discusses limitations on a court's discretion to deny name changes. In *Cruchelow*, the petitioner's name change was denied based on a trial court's policy of denying petitions for all incarcerated persons because it tended to confuse the records in penal institutions." *Id.* at 834.

The Supreme Court of Utah held that under similar statutes the general standard was that petitions should be granted "unless sought for a wrongful or fraudulent purpose." *Id.* at 834 (quoting *Knight*, 537 P.2d 1085, 1085). Accordingly, the lower court must "show some substantial reason before it is justified in denying a petition for a name change." *Id.* To provide for meaningful review, the trial courts finding of a substantial reason should be supported by the record. *Id.*

"Without any evidentiary support," the Supreme Court of Utah held, "we cannot consider a court's 'policy' as a substantial reason to conclude a [name change] would be improper." *Id.* at 834-5. When lower court's decision was based on "unsupported generalizations and speculation," rather than factual evidence on the record, it is an abuse of discretion. *Id.* at 835 (quoting 57 Am. Jr. 2d Names § 22 (1988)).

While the above authority is merely persuasive, and the name change statute interpreted in those cases are not identical, the legal standards applied are substantially similar. And while some of the above cases initially appear to have constitutional dimensions related to a protected status, the courts ultimately focused their decisions on the standards of name change statutes themselves.

III. The Cumberland County Probate Court denied Ms. Boardman's petition based on unsupported factual findings.

The probate court here determined that it would be inherently deceptive for Ms. Boardman to have the same last name as Mr. Currier. (A. 2, 6). This court also suggested that Ms. Boardman and Mr. Currier would seek out credit, a lease, or records and either present themselves

as married or fail to correct a misimpression. (A. 6-7). The court also expressed more general concerns about the interests of the public at large, emphasizing in its written order that the change would "give the public impression they are married and this a false impression." (A. 2)

On a narrow level, even if the exception the probate court applied were valid, the record does not support the court's decision that such an exception would apply to Ms. Boardman's petition. There was no evidence that Mr. Currier was Ms. Boardman's "partner," that they lived together, or that they intended to live together. Ms. Boardman simply noted that Currier was the name of her "friend." (A. 6).

Further, the name change statute expressly permits denial of the petition only where the court finds a *purpose* to defraud or a *purpose* contrary to the public interest. 18-A M.R.S. § 1-701(f). The court made no finding of an improper motive in submitting the petition. Thus, even if the probate court could see potential for misapprehension, such confusion should not be a basis for denial of a name change unless misapprehension was the petitioner's purpose.

Ms. Boardman's petition was facially valid, supported by an affidavit, and was duly noticed directly by Ms. Boardman to any

interested parties and by the probate court through publication. The record shows no objections. The court had authority to conduct any background checks necessary to address concerns related to credit history or criminal history and either chose not to conduct such searches or was satisfied with the results. 18-A M.R.S. § 1-701(e).

In the absence of any evidence of Ms. Boardman's relationship to Mr. Currier or any improper purpose, Ms. Boardman's petition was simply an ordinary request by an adult to change her last name, a change that the record indicates would have no ill effect on creditors, family members, or any person with who Ms. Boardman lived or worked or who was a blood relative of a person with whom she lived or worked who shared the same name.

IV. The Cumberland County Probate Court failed to apply the appropriate legal standards in finding harm to the public.

The broader standards discussed in *Reben* do allow the probate court to consider whether the change of name would interfere with the rights of others. *In re A.M.B.*, 2010 ME 54, 997 A.2d 754, 755 (Me. 2010). Accordingly, certain circumstances might exist where a court could

properly deny a name change in which the motivation was legitimate but the result would be harmful to others.

To that extent, it is important to consider the scope of the trial court's discretion to deny a petition based on a finding of harm to the public interest. The probate court's primary concern here was a perceived harm to the public based on an unmarried couple giving a false impression of marriage (A. 2, 6-7).

In particular, the court feared that Ms. Boardman might engage in some fraudulent conduct in the future in obtaining credit, a lease or records under false pretenses, even if inadvertently (A. 6-7). In applying an inflexible and arbitrary "exception" to the name change statute, the probate court abused its discretion.

In addressing potential interference with the rights of others, the court in *Reben* noted that "[i]f any other persons had rights which entitled them to object, they failed to do so, after public notice." 342 A.2d at 695. Notably, the court in *Reben* did not speculate whether, in a cultural context in which almost all married couples shared a name, it would be confusing to the public for a married woman to present herself with her maiden name. In that sense, analysis of interference with rights

of others should focus on those who object after due notice, rather than speculating on uncertain harms to the public at large.

In any case, the court's fear of specific instances of confusion and fraud is questionable on its face. Landlords cannot discriminate based on familial status in offering a rental, an entity extending credit could independently verify marital status, and records could easily be obtained by unmarried persons under the Maine Surrogacy Statute or under a power of attorney. *See* 5 M.R.S. § 4581; 18-A M.R.S. §§ 5-805 and 5-808. It is unclear what advantage could be gained by giving a false impression of legally married status in these examples.

The probate court's exception for unmarried partners also appears to assume that the public has a cognizable or protectable right to know the marital status of all those they encounter. Even if it were advisable to have that knowledge, it would likely be impossible to prevent all confusion on the matter.

Ultimately, an unmarried couple could legally give an impression to others of being married simply by living together, exchanging rings, and even calling themselves married. On the other hand, married couples might not share a name and might choose not to wear rings on

particular fingers. To make matters more complicated, unmarried partners could obtain a legal status similar to marriage under Maine domestic partnership law. *See* 22 M.R.S. § 2710.

In practice, it is nearly impossible to distinguish between those couples who are in committed relationships and those who are legally married. If anyone has a legal interest in or right to know someone's actual status, they can ask for verification. In light of that unavoidable uncertainty, it is not clear what legitimate public interest the court was protecting in denying Ms. Boardman's petition.

CONCLUSION

Under *Reben*, the court should only deny a name change petition if there is record evidence indicating fraudulent intent or some cognizable harm to other persons that would override petitioner's interest in pursuing a name change.

Here, the court abused its discretion because there was no evidence on the record supporting the conclusion that it would be inherently deceptive for unmarried persons to share the same last name or that anyone would be harmed by granting Ms. Boardman's petition.

Accordingly, Appellant Carol Boardman respectfully requests that the Court reverse the decision of the probate court and remand with instructions not to apply any exception for name changes based on marital status.

Respectfully submitted by,

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Dated: November 14, 2016

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I am not aware of any other party to this appeal who would be entitled to receive a copy of the Brief of the Appellant.

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